

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELANO MICOU,

Defendant-Appellant.

UNPUBLISHED

July 15, 2014

No. 313531

Muskegon Circuit Court

LC No. 12-061612-FC

Before: FITZGERALD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

A jury convicted defendant of armed robbery, MCL 750.529, and the trial court sentenced defendant as a fourth-offense felony offender, MCL 769.12, to a prison term of 35 to 70 years. Defendant appeals as of right. We affirm.

Donald O’Neal, the victim, got into the backseat of a car with a friend. Defendant was also in the back seat of the vehicle. The driver thereafter stopped at a stop sign and O’Neal’s friend said, “This would be a good place to start.” Defendant immediately struck O’Neal on the head with a beer bottle. O’Neal and defendant subsequently fought in the car and the fight moved out of the car and into the street. Defendant knocked O’Neal to the ground, and grabbed O’Neal’s wallet, jacket, shirt, and cellular telephone.

On appeal, defendant argues that defense counsel, Ronald Pannucci, had a conflict of interest that resulted in violations of the MRPC and the denial of his right to the effective assistance of counsel. Pannucci was a former circuit judge who in 1983 sentenced defendant to a prison term of 60 to 200 years for a conspiracy to commit armed robbery conviction. Defendant appealed and, on December 20, 1984, this Court found that the sentence was “excessive” and remanded the case to a different judge for resentencing. *People v Micou*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 1984 (Docket No. 73582), vacated 422 Mich 882 (1985). The Supreme Court vacated this Court’s opinion on October 2, 1985, and remanded to this Court to determine if the sentence “shock[ed] the conscience of the appellate court.” On remand, this Court again remanded for resentencing in front of a different judge, holding that “[Pannucci’s] remarks, notwithstanding the disclaimer, come dangerously close to an independent finding of guilt on another charge [, murder,] of which defendant was not convicted.” *People v Micou (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued October 2, 1985 (Docket No. 84944), slip op p 1.

Defendant now asserts that Pannucci's prior sentencing of defendant created a conflict of interest because Pannucci had an interest in ensuring defendant received the sentence that Pannucci originally wanted him to receive back in 1983. He argues that he is entitled to a new trial because defense counsel violated the Michigan Rules of Professional Conduct (MRPC). However, a violation of the MRPC alone does not entitle a defendant to a new trial. *People v Green*, 405 Mich 273, 293; 274 NW2d 448 (1979). Rather, we consider the alleged violations of the MRPC when deciding if a conflict of interest violated defendant's right to the effective assistance of counsel.

"[T]here is no automatic correlation between an attorney's theoretical self-interest and an ability to loyally serve a defendant." *People v Smith*, 456 Mich 543, 557; 581 NW2d 654 (1998) (citation omitted). A defendant "must establish that an actual conflict of interest adversely affected his lawyer's performance." *Id.* at 556 (citation omitted). Defendant argues that Pannucci violated MRPC 1.7, the general rule governing conflict of interest. Defendant also argues that Pannucci's conflict of interest is imputed to two other partners in Pannucci's firm who represented defendant in this case. See MRPC 1.10(a). Defendant, however, has failed to establish the factual predicate for his claim there was an "actual conflict of interest." *Smith*, 456 Mich at 556 (citation omitted); see *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). While previous cases establish that Pannucci sentenced defendant to an excessive sentence and made statements on the record at that time that suggested that he believed defendant committed murder, defendant has failed to show that two decades later Pannucci had a continuing interest in punishing defendant. *Hoag*, 460 Mich at 6. Defendant's argument is based upon pure speculation. Defendant has not shown that Pannucci had his "own interest" that could materially limit his representation of defendant to the point that it became a conflict of interest. MRPC 1.7(b). Moreover, defendant has not established that a violation of MRPC 1.7(b) occurred. Thus, there was no actual conflict to impute to the other partners in Pannucci's firm who represented defendant. MRPC 1.10(a). Defendant has not shown "evidence of an actual conflict of interest on the record." *Smith*, 456 Mich at 558.

Even assuming that the facts supported a finding that a conflict of interest existed, defendant has not shown that the alleged conflict "adversely affected his lawyer's performance." *Id.* at 556 (citation omitted). Defendant argues that the decision by counsel to allow defendant to make inculpatory statements to the police shows that a conflict "adversely affected his lawyer's performance." However, nothing in the record shows that Pannucci or the other two attorneys made a decision to allow defendant to speak with the police, and nothing in the record even supports a finding that they were aware that defendant met with the police for the interviews at issue. Thus, defendant has not shown that this was a decision made because of any conflict of interest, *Hoag*, 460 Mich at 6, and defendant has not otherwise shown that a conflict "adversely affected his lawyer's performance." *Smith*, 456 Mich at 556.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Douglas B. Shapiro